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CONSTITUTIONAL LAW—EIGHT-HOUR LAW ON PUBLIC WORKS.—A statute of Texas provided that no employer on public works should require his labor to work more than eight hours on each working day. The preamble recited that the bill was passed to promote the public health. *Held,* the law is constitutional. In passing on the substantial constitutional point, the court said: "We know of no constitutional provision of our own Constitution, or of the Constitution of the United States, nor of any decision in our state, or by the United States Supreme Court, which directly or indirectly inhibits the legislature from passing a law, under its unquestioned police power, to protect the lives and constitution and health of its citizens. In fact, it would be the imperative duty of the legislature, if the necessity arose, to enact such legislation. This eight-hour law, as it shows on its face, was enacted for such purposes, and under such necessity, as to show it is in no way void or unconstitutional, even if it incidentally curtails or abridges the right, under the circumstances as enacted, of an employer and employee ordinarily privately and personally contracting in the particulars prohibited. Their private and personal right, if so, must yield to the necessary and imperative public good." *Bradford* v. *State* (Tex. Cr. App.), 180 S. W. 702.

While the general result of this decision is correct, the reasoning by which that result is reached is, in view of the present state of the authorities, somewhat unusual. It is probably true that no decision can be found which "inhibits the legislature from passing a law, under its unquestioned police power, to protect the lives and constitution and health of its citizens." But the courts have not been agreed that an eight-hour law is at all necessary to attain these ends. *Lochner* v. *New York,* 198 U. S. 45, 25 Sup. Ct. 539, 49 L. Ed. 937, 3 Ann. Cas. 1133; *Comm.* v. *Boston & M. R. R.,* 110 N. E. 264; *Opinion of Justices,* 208 Mass. 619, 94 N. E. 1044, 34 L. R. A. (N. S.) 771; *Low* v. *Reese Prtg. Co.,* 41 Neb. 127, 59 N. W. 362, 24 L. R. A. 702. 29 HARV. LAW REV. 353. This objection seems to be answered by the court's insistence that this law "shows on its face" that it is a health law. But we cannot believe that the court intended to intimate that the constitutionality of a law is determined by whether or not it is introduced by a dramatically-written preamble. No doubt there is to-day a tendency to uphold protective labor legislation, and this tendency should be commended, but the general statement of this case is certainly not to be justified. However that may be, a more vital objection to the opinion is that it goes farther than it needs to. The present law refers only to employment on public work. That sort of employment rests upon a different premise than does employment in ordinary private industry. In the former case it is possible to say that the state, like any other employer, can prescribe the method of accomplishing the work; but that in respect to the latter the state acts in a sovereign capacity. This distinction is recognized by the cases of *Atkin* v. *Kansas,* 191 U. S. 207; *Ellis* v. *United States,* 206 U. S. 246, 27 Sup. Ct. 600, 51 L. Ed. 1047; *Heim* v. *McCall,* 36 Sup. Ct. 78; see contra, *People* v. *Orange Road Const. Co.,* 175 N. Y. 84, 67 N. E. 129; *Adams* v. *Brenan,* 177 Ill. 194, 52 N. E. 314, 42 L. R. A. 718. The instant case might well have been decided upon this same basis; and in so far, therefore, as it refers to the constitu-

tionality of enacting an eight-hour day for employments in general, its statements must be regarded as dictum. If this law were tested as an exercise of the police power merely, it is probable that the classification attempted would be condemned as arbitrary. See *People* v. *Orange Road Const Co.*, 175 N. Y. 84, 88.

CONSTITUTIONAL LAW—SPECIAL ASSESSMENTS.—The charter of the city of St. Louis, Missouri, provides for special assessments for street paving to be levied according to the following rule: one-fourth of the cost of paving is to be borne by the abutting owners on the basis of the front feet of ground which they own on the street in question; the remaining three-fourths is to be assessed on a district formed by drawing parallel lines to the paved street midway between that street and the next parallel street to it. On the district thus formed, the three-quarters assessment is to be levied. If there should be no parallel street the line is to be drawn 300 feet from the paved street and parallel to it. Under the provisions of this charter a certain Broadway street in St. Louis was paved. On the side of the paved street where defendant's property was situated the nearest street was 1,000 feet distant, and accordingly 500 feet of its land was included in the district; on the opposite side of the street, where the next parallel street was but 300 feet away, only 150 feet were included in the district. Defendant resisted the levy. *Held,* the plan of assessment is unconstitutional, because based upon a rule where the "probability is that the parties will be taxed disproportionately to each other and to the benefit conferred." *Gast Realty & Investment Co.* v. *Schneider Granite Co.*, 36 Sup. Ct. 254.

This case, together with the very recent cases of *Houck* v. *Little River Drainage District Co.*, 239 U. S. 254, 36 Sup. Ct. 58, and *Wagner* v. *Leser*, 36 Sup. Ct. 66, may be regarded as expressing the settled attitude of the Supreme Court on the matter of special assessments. In these cases it was laid down, following *French* v. *Barber Asphalt Paving Co.*, 181 U. S. 324, and *Louisville & Nashville Rd. Co.* v. *Barber Asphalt Paving Co.*, 197 U. S. 430, that the legislature might determine the amount of the special assessment, the extent of the taxing district, and the method of apportioning the burdens; and that "its action cannot be assailed under the Fourteenth Amendment unless it is palpably arbitrary and a plain abuse; in such cases there is no requirement of the Federal Constitution that for every payment there must be an equal benefit. The state in its discretion may lay such assessments in proportion to position, frontage, area, market value, or to benefits estimated by commissioners. And, as we have said, unless the exaction is a flagrant abuse, and by reason of its arbitrary character is mere confiscation of particular property, it cannot be maintained that the state has exceeded its taxing power." The important matter, then, is what is an abuse of power within the meaning of this rule. That an excess of tax over benefit received is not an abuse was decided in the *French* case and the *Louisville, etc., Rd.* case, supra. But in *Norwood* v. *Baker*, 172 U. S. 269, where a street was laid out through the land of one person, and the cost of taking the land from him as well as the cost of the condemna-